IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 1883 OF 2004
IN
WRIT PETITION NO. 540 OF 2002
WITH
WRIT PETITION NO. 3536 OF 2001

SMT. URMILA SHARAD SAMANT .. PETITIONER

Versus

M/s. ISHWAR & CO. & ANR. .. RESPONDENTS

Mr. D. V. Powar for petitioner

CORAM:-SMT. RANJANA DESAI, J.

DATED:-11-3-2005

P.C.

The petitioner in this civil application is the landlord Respondents in this civil application have filed Writ Petition No. 3536 of 2001 wherein the present petitioner is the respondent.

2. On 6/8/2001 Justice R. M. Lodha passed the following order in Writ Pttion No. 3536 of 2001.:

1. In this civil application, it is inter alia prayed

that conditional ad-interim stay order granted on 6/8/2001 and 1/10/2002 in favour of the applicant in civil application in Writ Petition No. 540 of 2002 be recalled and Writ Petition No. 3536 of 2001 be dismissed.

"Issue notice to the respondents to show cause why writ petition be not admitted and disposed of at an admission stage. Notice is made returnable on 12/9/2001. Hamdast granted.

2. In the meanwhile petitioners shall not be dispossessed from the suit premises on the following condidiions:-

(i) The petitioners file an undertaking before this court within two weeks from today that in the event of the writ petition being dismissed, the petitioners shall handover peaceful vacant possession to the respondent within the time as may be granted by this court.

(ii) The petitioners pay the entire arrears of rent till date to the respondent-original plaintiff within three weeks.

from today.

3. It will be the responsibility of the petitioners to ensure that respondent is served before the returnable date failing which ad interim stay order shall stand discharged."

3. It is clear, therefore, that as per this order, the petitioners in that petition i.e. M/s. Ishwar & Co. and another who are the respondents herein were not to be dispossessed if they were to abide by the conditions laid down therein. Condition 1 was that they had to file an undertaking before the court and condition 2 was that they had to pay entire arrears of rent till date within three weeks from the date of the order.

4. In this civil application it is averred that the undertaking was filed by M/s. Ishwar & Co. However, M/s. Ishwar & Co. did not pay the arrears of rent at all and the arrears of rent till date have not been paid.

5. On 28/1/2002 an order was passed by this court in Writ Petition No. 540 of 2002 filed by the petitioner that it should be heard along with Writ Petition No. 3536 of 2001. On 15//2/2002 and 20/3/2002 conditional orders were passed in Writ Petition No. 540 of 2002 for issuance of notice to the respondents failing which the petition

was to stand dismissed. Because the respondents were not served Writ Petition No. 540 of 2002 stood dismissed. The petitioner then filed Civil Application No. 1875 of 2002 for setting aside the said orders. Since there was a delay in filing that application the petitioner filed Civil Application No. 1950 of 2002 for condonation of delay in filing Civil Application No. 1875 of 2002.

6. Writ Petition No. 540 was then restored by order dated 1/10/02. By order dated 1/10/02 Justice A. M. Khanwilkar allowed civil application No. 1875 of 2002 and civil application No. 1950 of 2002. However, Justice Khanwilkar observed that ad-interim relief granted in Writ Petition No. 3536 of 2001 to continue till disposal of the petition. It is true that ad-interim relief granted by Justice Lodha on 6/8/2001 was continued but as I have stated hereinabove and if condition No. 2 of Justice Lodha's order is breached by the petitioners therein i.e. M/s. Ishwar & Co. and its partner Mr. Sompura, they have obviously lost protection from dispossession granted by Justice R. M. Lodha by his order dated 6/8/2001.

7. The petitioner filed L.P.A. No. 99 of 2003 against the order dated 1/10/2002 passed by Justice Khanwilkar. It was dismissed stating that if the petitioner is aggrieved by any other action it is open to her to take appropriate proceedings in the main matter. The petitioner sought

review of that order. The review application was rejected on 24/2/2004. The petitioner has, thereafter filed the present civil application on 16th July, 2004. This civil application was moved before Justice Khandeparkar on 12/8/2004. The petitioner was directed to serve the copies of the civil application on the respondents and file affidavit of service. On 26/10/2004 Justice Khandeparkar issued notice to the respondents and made it returnable on 6/12/2004. On 6/12/2004 Justice Khandeparkar observed that the notice issued to respondent 1 has returned unserved. He further observed that if no steps are taken to serve the respondent 1 by the applicant within a period of four weeks, the application shall stand dismissed for non-prosecution against respondent 1and if steps are taken to serve respondent 1 fresh notice be issued and the same shall be returnable in the week commencing from 7/2/2005. The petitioner paid process charges on 22/1`2/2004 for issuing notice to respondent 1. Accordingly notice was issued and it was served by affixing with bailif remarks "door is locked and room is sealed by Ruby Co-operative Bank since one and half years.

8. This matter has appeared on my board on several occasions but nobody has remained present in this court on behalf of M/s. Ishwar & Co. or its partner Shri Sompura. Record shows that several attempts have been made to serve M/s. Ishwar & Co. Court notice issued to

M/s. Ishwar & Co. has returned with bailiff remark “Company is closed for last one year” and court notice issued to Shri Sompura the partner of M/s. Ishwar & Co. has returned unserved with bailiff remark “not residing at given address”. This is a report is dated 6/5/2004. The petitioner, may, therefore, if he is so advised take further steps to serve M/s. Ishwar & Co. by publication.

9. With this clarification the civil application is disposed of.

10. Liberty to the petitioner to move for expeditious hearing.